



U.S. BANKRUPTCY COURT
NORTHERN DISTRICT OF TEXAS

ENTERED

TAWANA C. MARSHALL, CLERK
THE DATE OF ENTRY IS
ON THE COURT'S DOCKET

The following constitutes the ruling of the court and has the force and effect therein described.

Signed April 6, 2015


United States Bankruptcy Judge

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF TEXAS
DALLAS DIVISION

IN RE:

DARREN S. FISHMAN

Debtor.

§
§
§
§
§

CASE NO. 14-33246-hdh-7

**ORDER GRANTING C.O.D. CAPITAL CORP.'S MOTION FOR ORDER
GRANTING RELIEF FROM AUTOMATIC STAY**

CAME ON FOR CONSIDERATION the *C.O.D. Capital Corp.'s Motion for Order Granting Relief from Automatic Stay* (the "Motion") [Dkt. No. 42] filed by Creditor C.O.D. Capital Corp f/k/a C.O.D. Friendly ("COD"), a secured creditor herein, on March 6, 2015 to allow COD to exercise its state law and contractual remedies to enforce its lien or security interest against the Collateral,¹ including the Non-Voting Stock, and to pursue any and all remedies to which it is entitled under state law. The Court, having considered the Motion, the pleadings and claims filed

¹ All capitalized terms not defined herein shall have the meaning ascribed to them in the Motion.

in the case, the announcement and representation of counsel on the record, and the agreement of the Chapter 7 Trustee and COD to be bound by the terms of this Order, hereby FINDS AND CONCLUDES THAT:

A. The Court has jurisdiction to consider this Motion pursuant to 28 U.S.C. § 1334. The Motion commenced a core proceeding pursuant to 28 U.S.C. § 157(b)(2)(G). Venue is proper in this Court pursuant to 28 U.S.C. § 1408.

B. On July 2, 2014, (the “Petition Date”), Darren S. Fishman (“Debtor”) filed for bankruptcy protection under chapter 7 of the Bankruptcy Code. The Debtor is an individual.

C. Prior to the Petition Date, on August 9, 2012, COD issued Debtor 50,000 shares of non-voting stock which is evidenced by Certificate No. NV-4 (the “Non-Voting Stock”). COD is a closely held corporation. The Non-Voting Stock represents a minority interest in COD.

D. On or about August 9, 2012, Debtor executed that certain Secured Promissory Note (the “Note”) payable to COD in the original principal amount of \$250,000.00 and bearing an interest rate of 4.00%. COD is the owner and holder of the Note. The Note is secured by all of the Debtor’s right, title, present and future interest in and relating to the Collateral as more particularly stated in the Note and which includes 50,000 shares of Non-Voting Stock in COD. COD has possession of the Non-Voting Stock.

E. Debtor has made no payments of interest or principal on the Note to COD. As of the Petition Date, COD held a valid, perfected and secured claim (as defined in § 101 of the Bankruptcy Code) against the Debtor in the aggregate amount of at least \$250,000 in unpaid principal and accrued but unpaid interest, plus any and all additional unpaid interest, fees, expenses and costs and other obligations permitted under that certain Note, the Bankruptcy Code and other applicable law. COD timely filed a proof of claim in this case [Claim No. 8 on Claims Register].

F. Debtor's Statement of Intention [Doc 17] states that Debtor will surrender the 50,000 shares of Non-Voting Stock.

G. The value of the Non-Voting Stock is estimated at \$5,000 as of the Petition Date.

H. The Debtor has no equity in the Non-Voting Stock and it is not required for an effective reorganization as the Debtor has filed a Chapter 7 and is liquidating his assets.

I. COD is not adequately protected in its interest in the Non-Voting Stock.

NOW, THEREFORE, IT IS HEREBY ORDERED, ADJUDGED AND DECREED:

1. The Motion is GRANTED as set forth herein.
2. The automatic stay is terminated as to COD's interest in the Collateral including the Non-Voting Stock.
3. COD may proceed with foreclosure under the Note and state law and pursue any other available state law remedies to the exclusion of the Debtor and other creditors;

END OF ORDER

Order submitted by:

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